

Application No.: 09/943,533
Amendment dated: August 19, 2003
Reply to Office Action of March 5, 2003

REMARKS

Claims 12-30 remain in the application. No claims stand allowed at the present time. Applicant has herein proposed amendments to independent claims 12, 21 and 30, which Applicant believes places this case in condition for allowance or clarifies the issues and otherwise places the application in better condition for appeal.

Claims 12, 13, 16, 17, 21, 22, 25, 26 and 28-30 stand rejected under 35 U.S. C. § 102 as anticipated by the Campbell '265 patent previously relied upon in the first Office Action. In this respect, the Office Action attributes the following structural teachings to the subject Campbell '265 patent in paragraph 2 of the Detailed Action:

"Campbell discloses a cord tie device as claimed, wherein said device comprises a continuous elastomeric band (22) having a width (i.e., the width dimension of area (24)) substantially greater [than] its thickness, a substantially cylindrical retainer (26) having an elongated body defining a 'T-shaped' notch for receiving widthwise a portion of said elastomeric band, a band receiving portion of said notch (36), first (A) and second (B) tabs extending axially over said band receiving portion of said notch and defining a mouth portion (near 36') of said notch, wherein said mouth portion has a width less than the width (i.e., the width of area (24)) of said elastomeric band, See Figures 2-6 and column 4, lines 3-18."

The Office Action now contends that the Campbell "tie device" discloses a "continuous" elastomeric band (22). Element 22 of the Campbell patent is the flexible strap 22 having strap segments 23 with spaced disks 24 therealong. The flexible strap 22 is a member of finite length and is not "continuous" or "endless", as specified in Applicant's claims. The above-asserted disclosure of the Campbell patent is also said to disclose a "substantially cylindrical retainer 26." In the Campbell patent, the head 26 is a flat, truncated, triangular member and is in no way a cylindrical retainer, such as Applicant's cylindrical retainer member 5. In addition, the tabs A and B of the Campbell patent cannot be said to extend "axially" of said retainer over the band-receiving portion of the notch therein. It is not appreciated that there is an axial orientation of Campbell's retainer 26 and to the extent such might exist, tabs A and B would appear to extend laterally thereof, rather than axially of the

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length of the cylindrical retainer 26. Thus, Applicant contests the above-quoted identification of structure allegedly anticipating all claims rejected as anticipated, except for claims 29 and 30.

Turning now to specific claims, amended independent claim 12 is believed to clearly patentably distinguish over the Campbell patent. Claim 12 is hereinabove amended to recite that the elastomeric band has a "uniform" width. As noted above, the strap 22 of the Campbell patent has a succession of short strap segments 23 interconnected by locking disks 24 which are sized and shaped to be significantly wider than the strap segments 23. Thus, Campbell clearly does not disclose an elastomeric band having a "uniform width". Nor would it be possible to substitute an elastomeric band of uniform width in the Campbell patent, since the strap 22 would merely slide through the head 26 of the tie device 10 and thus render the Campbell configuration, as thus modified, inoperative.

It is also noteworthy that the recitation of "an elastomeric band" in claim 12 contemplates a "continuous" or "endless" band, by definition. *Webster's Third International Dictionary* defines "band" in the context of a thin, flat, encircling strip, strap or flat band of material serving chiefly to bind or contain something as "a ring or endless strip of elastic (as for holding or compressing wrapping or keeping small objects together)." Thus, the recitation in claim 12 of "band" as being "a ring or endless strip of elastic" coupled with the specification of a "uniform width" uniquely confines a conventional rubber band, as contemplated by the present invention. These limitations also clearly patentably distinguish claim 12 over the Campbell patent.

It is also submitted that independent claim 21, as amended hereinabove, patentably distinguishes the Campbell patent. First of all, claim 21 recites a "continuous elastomeric band", which, as discussed above, distinguishes Campbell's flexible strip 22 of a finite length, which is not "continuous" or "endless". Claim 21 has also been amended like claim 12 to recite a "substantially uniform width" of the continuous elastomeric band to uniquely define a conventional rubber band according to Applicant's invention, while distinguishing the necessarily nonuniform width in the form of strap segments 23 and disks 24 necessary to operation of the tie device of the Campbell patent. Accordingly, it is submitted that claim 21, as amended, patentably distinguishes the Campbell patent.

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Finally, it is submitted that independent claim 30, as amended hereinabove, patentably distinguishes the Campbell patent for the reasons involving claims 12 and 21 as set forth above and for additional reasons. First, claim 30 now uniquely defines an "endless" or "continuous" band of "uniform width" to thus uniquely define a conventional rubber band, as discussed above in conjunction with claims 12 and 21. Additionally, claim 30 has been amended to indicate that the rubber band forms a first end loop and a second end loop together with an elongate retainer. The claim further specifies that the first end loop with the retainer is receivable in the second end loop and held by the retainer to prevent separation of the first end loop and the second loop. The Campbell patent in no way contemplates the formation of loops in a rubber band, the attachment of a retainer at a loop in the elastomeric band, the interrelation between the loops or the utilization of the retainer to prevent separation of the first end loop and the second end loop when the wrap is extended about a plurality of objects. Accordingly, claim 30, as amended, clearly patentably distinguishes the Campbell patent for a plurality of reasons. Thus, it is submitted that independent claims 1, 21 and 30, as well as the claims depending thereon, all patentably distinguish the Campbell patent.

In paragraph 4 of the Detailed Action, dependent claims 14-15, 18-20, 23, 24 and 27 are rejected under 35 U.S.C. 103 as obvious in view of the Campbell patent. In that respect, the Office Action indicates that Campbell discloses a wrap which includes a retainer having a band-receiving notch. The Office Action does, however, admit that Campbell does not include "a second notch located substantially diametrically opposed said first notch." The Office Action then contends that it would have been obvious to one having ordinary skill in the art to provide Campbell with a second notch, ostensibly as a duplication of parts, constituting a design consideration within the skill of the art. Applicant's invention as claimed does not merely contemplate the providing of a second notch as an alternative to the first notch, but rather provides the second notch positioned so that both notches are engaged by the elastomeric band. Thus, the retainer is secured to the elastomeric band at two spaced locations. This also serves to redirect the elastomeric band in the direction of the objects which are being wrapped.

In support of the obviousness contention, the Office Action in paragraph 4 and paragraph 7 contends at length that it would have been obvious to provide two notches and differing coloring to both sides of the strap of the Campbell structure, such that information

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could be communicated depending upon which side is facing outward. It continues by asserting it is well known to use bright coloring on outdoor power cords to provide increased visibility and similar coloring to reduce visibility. The Office Action then concludes that providing two notches and different colorations to the strap will afford the use of Campbell's strap and retainer combination greater flexibility. It is submitted that this entire reasoning is merely conjecture and irrelevant to any obviousness issue here presented. What is significant is the fact that Campbell in no way teaches or suggests a second set of tabs to form a second notch and Applicant's claim structure has nothing to do with color coding. In fact, a second set of tabs on the back side of the head 26 of the Campbell strap would be obstructed by the objects being wrapped and incapable of utilization at the same time tabs A and B are being utilized. Thus, it is clear that there is absolutely no teaching or cognizable suggestion of any type in the Campbell patent of providing a second notch, let alone positioned and constructed as set forth in dependent claims 14, 15, 18-20, 23 and 24.

Paragraph 4 of the Detailed Action further asserts that claims 18 and 27 are subject to the reminder that a functional "whereby" statement does not define any structure and cannot serve to distinguish. It is submitted that such may be an accurate statement of law with respect to a "whereby" clause which is merely functional. However, claims 18 and 27 cite additional structure in specifying that one portion of the elastomeric band is received within said first notch and another portion of the elastomeric band is received in said second notch. Thus, these claims clearly break the elastic band into separable portions and structurally interrelate those portions with the claimed first notch and second notch. Thus, these claims do not consist solely of a functional statement, but positively recite structure and structural interrelationships. The obviousness rejection as to claims 14-15, 18-20, 23, 24 and 27 is neither factually nor legally sound.

Finally, in paragraph 6 of the Detailed Action, the Office Action asserts that claim 12, in reciting a "elastomeric band" does not define a "continuous" rubber band, which is a feature upon which Applicant relies. It is submitted that, based upon the definition of the word "band" quoted above, such inherently contemplates an "endless" or "continuous" strip forming a ring. Thus, claim 12 contains the features previously argued. It is also noted that claim 21 does and originally did contain the term "continuous". Of further significance is the fact that Applicant

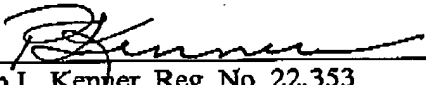
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has herein specified in each of claims 12, 21 and 30 that the elastomeric band is of "uniform width", thereby further uniquely defining the characteristics of an elastomeric band while distinguishing the very different structure of the Campbell patent.

In view of the above-proposed amendments to the claims and the related discussion, Applicant solicits reconsideration and favorable action on claims 12-30. Alternatively, Applicant requests entry of the instant amendment as better defining the issues presented in the instant application and otherwise places this case in better condition for purposes of appeal.

Should the Examiner wish to discuss any of the foregoing in more detail, the undersigned attorney would welcome a telephone call at the number set forth below.

Respectfully submitted,


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